IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11385 of 2001
with
SPECIAL CIVIL APPLICATION No 10985 of 2001
with
SPECIAL CIVIL APPLICATION NO.5186 OF 2000

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHABHAR DEODAR AGRICULTURAL PRODUCE MARKET COMMITTEE

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 11385 of 2001
MR HARIN P RAVAL for Petitioner No. 1
Mr.Kamal Trivedi, Addl.AG with
Mr.A.D.Oza,GOVERNMENT PLEADER for Respondent No. 1-3
DS AFF.NOT FILED (R) for Respondent No. 4

2. Special Civil Application No. 10985 of 2001
MR HARIN P RAVAL for Petitioner No. 1
Mr.Kamal Trivedi,Addl.AG with
Mr.A.D.Oza,GOVERNMENT PLEADER for Respondent No. 1

3. Special Civil Application No.5186 of 2000

Mr.K.S.Zaveri for petitioner No.1
Mr.Kamal Trivedi, Addl.AG with
Mr.A.D.Oza,GOVERNMENT PLEADER FOR RESPONDENT NO.1

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 21/10/2002

ORAL (COMMON)JUDGEMENT

Special Civil Application Nos 11385/01 and 10985/01 are preferred challenging the notification dated 15.10.01 issued by the State Govt in purported exercise of powers under section 52 read with section 5 of Gujarat Agricultural Produce Market Committees Act (hereinafter referred to as the "Act") so far as the bifurcaion of Bhabhar DeodarMarket Committee is concerned and so far as bifurcation of Anand Market Committee is concerned Spl.C.A.No.5186/00 challenging the notification dated 9.5.00 is preferred.

2. Heard Mr.H.P.Raval appearing for the petitioners of Spl.C.A.Nos 11385/01 and 10985/01 and Mr.K.S.Zaveri for the petitioners of Spl.C.A.No.5186/00 and Mr.Kamal Trivedi, Ld.Addl.A.G. for respondent-State and Ms.Mangukia and Waghela for private respondents.

3. The contention raised on behalf of petitionerrs is that before exercising powers under section 52 read with section 5 of the Act even for issuance of preliminary notification the procedure as required under section 5 of the Act by the Director is not followed. It has also been contended on behalf of the petitioners that there are serious allegations of political malafides in as much as attempts were made to see that the election process is hampered. The petitioners had to prefer the petition for ensuring that the election is completed and this court had passed order dated 23.8.01 in Spl.C.A.No.6926/01 to complete the process of election on or before 6.10.01. It has also been submitted that inspite of the same on 30.August 2001 the appointment of Administrator was made which ultimately came to be quashed by this court as per order dated 15.10.01 passed in Spl.C.A.No.7277/01. It has been submitted that at the time when the aforesaid petition came to be disposed of a statement was made for completion of election process and at that time no disclosure was made by the concerned officer regarding exercise of power by the State Govt or

its contemplation. It has been submitted that thereafter election came to be held on 6.11.01, the result is declared and on 9.11.01 proposal was forwarded for publication of names of elected candidates under Rule 27 and on the very day i.e. on 9.11.2001 in a daily newspaper the notification is published dated15.10.01, and as per the contention of the petitioners the said notification is back-dated. It has been submitted that at that stage the petitioners have approached this court. It has been submitted on behalf of petitioners that since the party in power at the Statelevel had not been able to procure majority at the election of the Market Committee the exercise of power is undertaken with a view to see that the term of the elected body is put to end and power can be captured.

4. On behalf of respondent-State Mr.Kamal Trivedi, Ld.Addl.AG has submitted that in view of the language of section 52 of the Act the procedure as required under section 5 of the Act has to be followed but the procedure would be mere publication of preliminary notification by the State Govt and not by the Director. He submitted that in the matter of division of Market Committee or cessation of the market committee the power is vested with the State Govt itself and the Director is not required to undertake the procedure as required under section 5 of the Act. He submitted that in the present case the preliminary notification has been published and the State Govt has yet to take final decision and final notification is not published. He submitted that therefore the matters can be said to be premature at this stage.

5. Having considered the rival contentions of the parties I am of the view that upon the question of interpretation of section 52 on exercise of powers by the State Govt for the purpose of dividing the market committee, it would not be necessary for this court to examine the said aspect at this stage, more particularly, because it is the admitted position that the State Govt has not taken any final decision upon the preliminary notification and final notification in any case is not published for the said purpose as to whether the market committee should be divided or not. If the petitioners are so advised they may file their objections or representation in accordance with law for the said aspect. However, so far as the exercise of power is concerned there are serious allegations of political malafides and in any event the activities of the present market committee is being run by elected body which resumed on 18.11.01.

6. So far as Nadiad market committee is concerned, which is relevant to the petitioner of SCA No.5186/00, the election is held but inspite of the same the declaration is not made under Rule 27 and as a result thereof the elected body has not been able to resume the office and it has been submitted that for the purpose of ensuring the declaration under Rule 27 said petitioners had to prefer separate petition before this court.

7. I find it proper not to examine the question of malafide exercise of power at this stage and it is hoped that the Govt shall consider the same objectively and with a view to advance the purpose and object of the Act. Since the final notification is not published, I find that, considering the fact and circumstances of the case, the following directions would meet with the ends of justice:

(i) The petitioners, if so advised, may file their objections and/or representations to the preliminary notification before the State Govt within a period of three weeks from today.

(ii) Thereafter, it will be open to the State Govt to take decision in accordance with law and it is also made clear that if any decision is taken by the State Govt deciding ultimately to divide the market committee, the petitioners shall be at liberty to challenge the said decision in accordance with law and all the contentions regarding malafide exercise of power and interpretation of section 52 are kept open.

(iii) If the State Govt takes final decision of dividing the market committee, same shall not be communication by registered Post AD to the market committee

8. Subject to aforesaid directions, all the petitions are disposed of and rule in each petition is discharged.

21.10.02 (JAYANT PATEL,J)